



Federal Communications Commission
Washington, D.C. 20554

September 19, 2012

Case Identifier: CGB-CC-1259

Retrospec Films
Attn: Nathan Groves
2929 S 69th E Ave.
Broken Arrow, OK 74012

Re: *McGraw TV Show*

Dear Mr. Groves:

The Consumer and Governmental Affairs Bureau (CGB) of the Federal Communications Commission ("FCC") has reviewed your petition for exemption from the closed captioning rules. As discussed in further detail below, CGB has found that the petition provides some, but not all, of the information needed for us to make a determination as to whether or not the FCC closed captioning requirements would be economically burdensome for you.

As an initial matter, your petition suggests that your program should be exempt based on Section 79.1(d)(8) of the FCC's Rules, 47 C.F.R. § 79.1(d)(8), which exempts from the closed captioning rules "locally produced and distributed non-news programming with no repeat value." This exemption applies to "programming that is locally produced *by the video programming distributor*, has no repeat value, is of local public interest, is not news programming, and for which the 'electronic news room' technique of captioning is unavailable" (emphasis added). Video programming distributor is defined in Section 79.1(a)(2) of the FCC's Rules, 47 C.F.R. § 79.1(a)(2), as follows: "Any television broadcast station licensed by the Commission and any multi-channel video programming distributor as defined in Section 76.1000(e) of the rules, and any other distributor of video programming for residential reception *that delivers such programming directly to the home and is subject to the jurisdiction of the Commission*" (emphasis added). We note that this self-implementing exemption is a narrowly focused exemption.¹ Retrospec Films does not explain or provide adequate support for its contention that *McGraw TV Show* falls within the scope of this exemption. Further, we note that Retrospec Films does not appear to be a video programming distributor within the meaning of the FCC's Rules.

Additionally, your petition seeks an exemption for programming for which the content of the soundtrack is displayed visually through text. Section 79.1(d)(4) of the FCC's Rules, 47 C.F.R. § 79.1(d)(4), provides an exemption only for "video programming or portions of video programming for which the content of the soundtrack is displayed visually through text or graphics. It is intended to exempt primarily textual programming, such as programming guide services or community bulletin boards, that provide all relevant information about program schedules or events in a textual form. You have not provided information indicating that the content of *McGraw TV Show*'s soundtrack is displayed primarily through text or graphics without accompanying video. Accordingly, this exemption does not appear to apply to your operation.

¹ See, e.g., *New Life Team*, Memorandum Opinion and Order, 20 FCC Rcd 3679, 3680, ¶3 (MB, 2005).

Further, we note that your petition included information on the cost of captioning *McGraw TV Show*, information on your operations, and information on the impact that captioning would have on your programming operations. We conclude, however, that because your petition is missing required information, we cannot take further action on your petition.

If you wish for this petition to receive further consideration for a closed captioning exemption, you must supplement your petition by providing us with the information described below **by October 19, 2012**, which is 30 days from the date of this letter:

- Documentation of your financial status sufficient to demonstrate your inability to afford closed captioning – for example, profit and loss statements or bank statement information (This should not just include the resources devoted to or the costs associated with the television program at issue (see TIP #1 on accompanying information sheet); and,
- Verification that you have sought additional sponsorship sources or other sources of revenue for captioning, and that, even if these efforts have not successfully produced assistance, you do not otherwise have the means to provide captioning for the program(s)(see TIP #3 on accompanying information sheet).

You also may provide any additional information that you deem relevant to an exemption determination, as well as any alternatives that could be a reasonable substitute for the closed captioning requirement. Please note that all supplemental information must be accompanied **by an affidavit** (*i.e.*, a written sworn statement made under oath before an official attesting to the truthfulness and accuracy of the material in your petition) **or be signed under penalty of perjury**. If you do not file the additional information **by October 19, 2012**, or the information that you provide is still deficient, your petition will be dismissed without prejudice to re-filing **on December 18, 2012**, and you will be required to begin providing closed captioning for the above-referenced programming **on December 19, 2012**.

If you decide to supplement your petition, your petition, as well as any supporting financial information provided, will be available for public inspection. If your petition contains confidential information, the FCC's rules provide a way for you to request "confidential treatment," while still providing enough information on a second version of your petition, so that the public can understand the basis for your exemption request and comment on its merits. See TIP #4 on the accompanying information sheet for more information on how to seek confidential treatment.

For your convenience, we have enclosed additional information that may help you better understand how the FCC processes individual requests for captioning exemptions. If you have additional questions pertaining to the filing of an exemption request, please contact the FCC's Disability Rights Office at captioningexemption@fcc.gov.

Roger Holberg, Attorney
Disability Rights Office
Consumer and Governmental Affairs Bureau

Enclosures

Instructions for Filing a Supplement to a Closed Captioning Exemption Petition

You must send the FCC an original and two (2) copies of the information supplementing your previously filed petition for a closed captioning exemption. Filings must be sent by hand or messenger delivery, commercial overnight courier, or by first class or overnight U.S. Postal Service mail.

For U.S. Postal Service mail, including Express Mail, Priority Mail, and First Class Mail, please use the following address:

Office of the Secretary
Federal Communications Commission
Attention: Disability Rights Office, Room 3-B431
445 12th Street, SW
Washington, DC 20554

For commercial overnight mail, such as Federal Express or United Parcel Service, please use the following address:

Office of the Secretary
Federal Communications Commission
Attention: Disability Rights Office, Room 3-B431
9300 East Hampton Drive
Capitol Heights, MD 20743

Electronic filing and faxes of petitions will not be accepted.

Please wait *at least two weeks* before contacting FCC staff to make inquiries about whether your petition has been received. **You must include the case identifier number at the top of the acknowledgement you previously received, which is also at the top of this letter, in all correspondence with the FCC regarding your petition.**